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Some instances in which the question of the powers of the Government of India of administration of or control over particular subjects has arisen.

Memorandum presented to the Indian Statutory Commission by the Government of India on **SOME INSTANCES IN WHICH THE QUESTION OF THE POWERS OF THE GOVERNMENT OF INDIA OF ADMINISTRATION OF OR CONTROL OVER PARTICULAR SUBJECTS HAS ARISEN.**

	PAGE.
1. Scope of the memorandum	1
2. Roads	2—3
3. Inland waterways ..	3
4. Treaty obligations of the Central Government as affected by provincial administration.	3—5
5. Public Health and Medical Education.	5—6
6. Industrial Development ..	6—12

Scope of the memorandum.

1. The classification of subjects as central and provincial subjects for the purpose of distinguishing the functions of governments, and the nature of the control which the Governor General in Council may exercise over the administration of provincial subjects, particularly those subjects in which the provincial executive is responsible to the provincial legislature, are matters which raise broad constitutional issues of great importance and which may also necessitate detailed enquiry. It is not proposed on this occasion to discuss general considerations which may govern their decision or to attempt to anticipate what may be the new constitutional conditions in which these matters must take their ultimate shape. But it is desirable to note for the information of the Indian Statutory Commission certain matters in regard to which practice has suggested that the Central Government must possess adequate powers either of direct administration or of control. The account which follows is not intended to be exhaustive of such matters. Its object is to use the experience of certain departments of the Government of India in order to indicate the kind of administrative problem to which the classification and sub-classification of functions has in the recent past given rise.

Roads.

2. Roads are a provincial transferred subject, and the control of the Governor General in Council is limited to the pursuit of the narrow purposes described in Devolution Rule 49. It is true that the Governor General in Council may declare any road to be of military importance and may prescribe in respect thereof the conditions subject to which it shall be constructed or maintained (Devolution Rule 12-A). But generally road development is the concern of provincial Ministers, and no regard has been had in the Devolution Rules to the All-India economic interests which are intimately concerned with it. Taxation on motor transport on the other hand is partly central and partly provincial and local. Import duties on motor vehicles, parts and accessories and tyres and tubes, and import and excise duties on motor spirit and lubricating oil are imposed by the Central Government. Vehicle taxes and miscellaneous demands such as license and examination fees are realized by provincial and local authorities.

The All-India aspects of road development and the possibility of Central control have recently come into prominence. Originally these matters arose as questions of taxation on motor transport. The Taxation Enquiry Committee (Report, paragraph 454) had recommended the abolition of tolls in the case of motor

vehicles and their replacement by provincial taxation to be distributed by a road board. "This should be accompanied" they said "if the development of motor transit is not to be hindered by a reduction in the rate of import duty." The Government of India accepted this recommendation so far as to reduce in 1927 the import duty on cars and tyres with the object, among others, of leaving to provincial and local authorities greater scope to increase local taxation on motor traffic with the object of improving road communications.

The popular demand, however, was not for the remission or the substantial reduction of taxation on motor transport. It was claimed that such taxation should be a tax for transport, not on transport; in other words that part, at any rate of the revenue derived from central taxation on motor transport should be earmarked for road development. But proposals regarding road finance, which concern the central Government as the taxing authority whose revenues are concerned, could not be put forward without some preliminary consideration of the desirability of road development, which is a subject entrusted to the care of provincial Ministers.

On 9th February 1927 a non-official member of the Council of State moved in that Chamber a resolution urging on the Government of India the necessity of providing funds out of the proceeds of central taxation on motor transport for road development. The resolution in the following form was accepted by Government, namely :—

> "This Council recommends to the Governor General in Council to appoint a Committee, including Members of both Houses of the Central Legislature, to examine the desirability of developing the road system of India, the means by which such development could be most suitably financed and to consider the formation of a Central Road Board for the purpose of advising in regard to, and co-ordinating the policy in respect of road development in India."

A Conference of Provincial Ministers and representative of the Department of the Government of India concerned was held and after its concurrence had been obtained, a Committee consisting of members of the two Chambers of the Indian Legislature was appointed with the following terms of reference :—

> (1) to examine the desirability of developing the road system of India, and, in particular, the

means by which such development could most suitably be financed ; and

(2) to consider, with due regard to the distribution of Central and Provincial functions, whether it is desirable that steps should be taken for the co-ordination of road development and research in road construction, by the formation of a Central Road Board or otherwise.

The Committee has not yet made its recommendations, and it is not possible to foresee what degree of control by the Government of India its proposals will contain or involve. But the circumstances of its appointment indicate clearly the existence of at least two demands, the first for the devotion of central revenues to a provincial purpose, the second for co-ordination of provincial activities in road development. Each of these demands would probably require some amendment of the existing constitution and each would seem to involve the necessity of investing the Central Government with some degree of control of the provincial subject of communication by road.

Inland Waterways.

3. A somewhat similar case is that of inland waterways. These communications are a provincial subject (Devolution Rules, Schedule I, Part II, item 81) except so far as they have been declared by rule made by the Governor General in Council or under legislation by the Indian Legislature to be a central subject. [Devolution Rules, Schedule I, Part I, item 5 (*c*)]. No such declaration has been made, but waterways which connect major Ports with the sea in so far as they fall within the limits of the ports are treated as a central subject, as the Ports themselves are a central subject. There is at present no apparent necessity for bringing inland waterways under direct central administration. But the necessity for some degree of control may arise from the fact that inland waterways sometimes pass from one province to another and so afford scope for conflict of interests between two authorities. If such conflict arose there would be convenience if the Central Government occupied a position analogous to that of an arbiter.

The same arrangement might be advantageous in the case of deep sea fisheries if only for the reason that the demarcation of the spheres of local Governments and the distance to which fishing rights extend may present difficulties. Fisheries are a provincial subject, transferred. But deep sea fishing in India is not sufficiently developed to make the question at present one of practical importance.

Treaty obligations of the Central Government as affected by provincial administration.

4. The extent to which provincial export and import duties and excise duties conflict with the treaty obligations of the Central Government has been described in the memorandum on the Financial Relations between the Government of India and the Provincial Governments. There are, however, other directions in which the exercise of authority conferred upon local Governments may impinge on international obligations undertaken for India as a whole.

India is a party to the Statute on the International Regime of maritime ports, and has, therefore, undertaken, *inter alia,* to grant to the vessels of every other contracting State equality of treatment with its own vessels, and to levy uniform customs duties in any of its maritime ports and on its other customs frontiers on goods of the same kind, source or destination. Under Article 1 of the Statute all ports normally frequented by sea-going vessels and used for foreign trade are deemed to be maritime ports. This category includes not only major ports, whose administration is a central subject, but also minor ports, all of which are under the administrative control of local Governments. It is, therefore, necessary to secure that the Central Government has sufficient powers of control to ensure that international obligations are fulfilled. At present the classification of minor ports as a provincial reserved subject enables the Government of India to use its general powers of superintendence, direction and control. The position would be different if the subject became a transferred provincial subject, and if the general powers of superintendence, direction and control in the Central Government suffered diminution.

In the case of port health administration the interests to be reconciled are the international obligations undertaken by the Central Government and the administration of public health by provincial ministries. Under the reformed constitution major ports, port quarantine and marine hospitals have been made central subjects, whereas public health and sanitation have been declared provincial transferred subjects, subject to legislation by the Indian legislature in respect of infectious and contagious diseases to such extent as may be declared by any act of the Indian legislature. The trouble arising out of this classification is that the term "port" has a very restricted topographical meaning. A port extends only to a distance of fifty yards above high water mark. The Government of India have thus at present no *locus standi* to enforce in areas adjacent to ports, for example, in the cities of Calcutta and Bombay, the wider measures needed to prevent

the ingress or egress of infections and contagious diseases, and so to fulfil their international obligations in this matter, such as the application to areas outside the 'statutory port limit' of measures to prevent the egress of infection from British Indian Ports, the supply of information regarding the outbreak of incidence of epidemic diseases to foreign authorities, etc.

But it is not only in the matter of administration that difficulties have arisen. The equitable apportionment of the expenditure on quarantine measures has also been the subject of dispute. The expression "port quarantine" in the Devolution Rules is unqualified, and it is therefore possible for local Governments, if they choose, to throw the whole burden of sanitary measures carried out at ports on Central revenues. The Central Government, on the other hand, might well contend that some at least of the measures taken under the name of port quarantine are part of the responsibility of the local Government of the province in which the port is situated. An attempt is being made to investigate in detail the exact nature and scope of the quarantine measures taken at present at different ports and to ascertain what modification or amplification of these measures may be necessary in order to conform to the requirements of the International Sanitary Convention of 1926. This investigation may lead to agreement in matters financial. But the difficulties arising from international obligations in the natural port area and the limitation of central administration to the artificial port area as defined in section 4 (3) of the Indian Ports Act (Act no. XV of 1908) may be capable of solution only by the exercise of some degree of central control over provincial administration of public health in the whole area to which international obligations extend.

Public Health and Medical Education.

5. The embarrassments incidental to the limited control, vested in the Governor General in Council, under Devolution Rule 49, in regard to transferred subjects are illustrated by two cases relating one to Public Health, the other to Medical Education.

In 1927, the Government of India, with the concurrence of local Governments, invited the Far Eastern Association of Tropical Medicine, which devotes itself to the study of tropical diseases and of public sanitation in the tropics, to meet in India. As both medical administration and Public Health are transferred provincial subjects, the local Governments were asked to share with the Central Government the expenses of entertaining the delegates and agreed to make such contribution, subject to the vote of their Legislative Councils.

In Bombay, the Legislative Council refused to vote the sum promised by the local Government and the Government of India had ultimately to meet the amount from their own revenues. Not having the power to recover from a provincial Government expenditure incurred on what was clearly a matter of concern to the whole of British India, they had no alternative.

Another example of the difficulties inherent in the administration of subjects which have a natural affinity but which constitutionally are subject to different degrees of control by the Governor General in Council is afforded by the overlapping of the regulation of medical standards and qualifications, which is a reserved provincial subject, and medical education, which is a transferred provincial subject. Over the former, the Governor General in Council has full powers of control ; over the latter, his powers are limited to matters specified in Devolution Rule 49. In practice, it is impossible, without being able to control standards of medical education, to regulate standards of medical qualifications. The result has been that the Government of India have been able to play no effective part in raising the standards of medical education in certain Indian Universities, the unsatisfactory nature of which has led to the loss of recognition of the medical degrees of these Universities by the General Medical Council of Great Britain.

Industrial Development.

6. The subject of industrial development is one which was vehemently debated when the reformed constitution was being given shape and whose solution at that time has neither given universal satisfaction nor achieved the results which were desired. For many years before the war Indian educated opinion ardently desired the industrial development of the country and consistently urged that Government should take a leading part in furthering that development. The war itself revealed in a striking manner the economic dependence of India on Europe and the necessity of State assistance or State management in the development and the inception of industries. The Government of India were accordingly led in 1916 to appoint the Indian Industrial Commission to examine the possibilities of industrial development and the means by which Government could encourage that development. The Commission presented its report in 1918. They delimited the main activities which, in their view Government should pursue in respect of industries and elaborated the details of the organisations required to carry out a national programme. The scheme was, however, framed on the basis of the system of Government as they knew it, and could not

take account of the uncertain changes which the authors of the Report on Indian Constitutional Reforms were still considering.

The authors of the Report on Indian Constitutional Reforms devoted considerable attention in paragraph 331 and subsequent paragraphs of the Report to the question of industries. They showed themselves aware of the nature of the proposals of the Indian Industrial Commission and their Report indeed contained a definite affirmation of the principles underlying the Industrial Commission's scheme. It is evident that the view of the authors of the report was that the development of industries which could not be regarded as local should be a central subject, for in the illustrative list of provincial subjects appended to their report the "development of arts and crafts and local industries" was shown as a provincial subject and marked as one which might suitably be transferred. Nevertheless the Report of the Industrial Commission was generally regarded by local Governments as strongly centralizing in tendency. The suspicion with which the report was regarded may be illustrated by the following words of the Madras Government. They wrote :—

"It would appear from the official summary of the report that the Commission proposes to lay on the Imperial Department of Industries the responsibility for the 'industrial policy of Government and the inauguration and carrying out of a *uniform programme* of industrial development throughout the country.' The functions of the Imperial Government as set out in paragraph 214 of the Commission's report include a duty to 'watch over provincial administration in order to secure the maintenance of a uniform industrial policy.' The expression '*uniform programme*' is somewhat vague and suggests considerable interference with the programme of provincial Governments. The Madras Government, however, understand that the expression need not necessarily be interpreted as indicating any intention on the part of the Commission that the Imperial department should interfere otherwise than by suggestion and advice in matters within the competence of the local Government. Mr. Low has informed this Government that the Commission's intention was merely to ensure that one provincial Government should not lag behind the others in industrial development and that if one link in a chain was lacking the Government of India might endeavour to persuade the provincial Government concerned to supply the link or, failing local enterprise, the deficiency might be supplied by the Imperial department. In

view of this explanation, the Governor in Council accepts the proposals of the Commission in this respect."

The Functions Committee dealt with the matter briefly in section 3 of paragraph 45 of their Report and found it impossible to draw any clear line between local and other industries. They therefore recommended the development of industries for transfer. The Government of India, however, who were unwilling altogether to abandon the Industrial Commission's policy, urged in their Fourth Despatch a different course. In the 66th paragraph they took exception to a position in which the Government of India would be debarred from undertaking the direct development of any industry, and in paragraph 116 and the immediately succeeding paragraphs they contended that the Central Government could not possibly divest itself of responsibility for the industrial progress of the country and adduced arguments against the transfer of the subject to the provincial field. The solution which they proposed was that the development of industries, including industrial research should appear both in the All-India list and in the provincial reserved list with a note to the effect that the fact that the development of any industry or any industrial research was being taken up by the Government of India would not prevent local Governments from also taking it up. These views were traversed in a memorandum presented to the Joint Parliamentary Committee by Mr. Feetham and Mr. (afterwards Sir) Hugh Stephenson. The matter was still further pursued in oral evidence and the decision reached was that now embodied in the Devolution Rules by which a new central subject was created as "Development of industries in cases where such development by central authority is declared by order of the Governor-General in Council made after consultation with the local Government or local Governments concerned expedient in the public interest." But the development of industries including industrial research and technical education became a transferred subject in all provinces.

The result was an almost complete divorce of the functions of the central and provincial Governments in respect of industries. In certain cases the Government of India can take action to make the subject central but this refers, as the context shews, primarily to existing industries of national importance. There was no intention of making the stimulation of new industries a central subject. For some time, indeed, the extent of the separation was perhaps (as the Inchcape Committee subsequently suggested) imperfectly realized by Government. A new Department of Industries was created, and for some time

made efforts, by means of conferences, publications, etc., to co-ordinate provincial efforts ; it also endeavoured to collect industrial information. These activities came to an end with the advent of the Inchcape Committee. Financially the position had already been set out clearly by the Secretary of State who wrote in 1921—

"There seems to me the strongest reason for avoiding giving colour to the idea that central revenues can properly be devoted (except to the extent which the arrangements for the financing of "agency functions" may require deviation from this principle) to the financing of any administrative project which is not within the category of "central subjects". The financial rules under section 45-A. of the Act do not provide for grants-in-aid by Your Excellency's Government to the provinces for educational or any other purposes, and the continuance of any such relic of the now obsolete financial system would be completely subversive of the whole structure of the division of revenues between the Government of India and the provinces which has been affected by the Act."

The Auditor General, in the following year, pointed out that the Government of India could not provide scholarships for the study of industries while the development of these industries was a provincial transferred subject. The separation was completed by the abandonment, in consequence of the opposition of nearly all the Ministers, of the creation of the proposed all-India services. This made it finally impossible to proceed with the general scheme formulated by the Industrial Commission, and rendered any project for an all-India policy impracticable.

The position was altered, however, in 1924 by the abandonment by the Government of India of the free trade policy which they had pursued in the past and the acceptance by them and the Central Legislature of a policy of discriminating protection. One result was to impose on the Central Government in particular cases a much closer responsibility for the industries of the country than they had ever previously assumed. But the measures taken in pursuance of a policy of protection were *ad hoc* measures whose nature was determined almost entirely by the conclusions reached on the merits of individual cases as presented by the Tariff Board. They were not based, like the scheme of the Industrial Commission's report, on any comprehensive scheme for the industrial development of the country, nor were they in any way co-ordinated with the various measures taken by provincial Governments for the encouragement of industrial development.

It is a matter for detailed enquiry in provinces how far the constitutional arrangements made by the Joint Parliamentary Committee have resulted in that development of the resources of the country which the authors of the Report on Indian Constitutional Reforms recognised as a suitable sphere of Government action. The Government of India do not wish to anticipate the information which the memoranda now under preparation by provincial Governments will doubtless afford. But there is undoubtedly a considerable body of opinion in the country which regards with disfavour the dissociation of the central Government from the important nation-building activity of the development of new industries. For example, the Committee appointed by the Bombay Government to advise on the operations of their Industries Department in their report in 1927 observes :—

> "During the years 1916 to 1918 the Indian Industrial Commission, under the presidentship of Sir Thomas Holland was touring the country, and all subsequent thought and effort in the direction of industrial development in India has been largely affected by the recommendations of that Commission ; and this committee is of the opinion that Government cannot do better than follow the general lines of that report. In following its recommendations the first difficulty met with is that the recommendations for action by provincial Governments depend in many vital particulars upon corresponding action by the Central Government, whereas the Central Government have rejected some of the most important of the Commission's proposals. This question assumes great importance when we consider the industries which we can usefully try to develop and the expert assistance necessary for the purpose. The recommendations of the Industrial Commission for the development of industries in the provinces depend upon the Central Government providing two all-India Services, those of industrial chemists and industrial engineers. Our problem would be very much simplified if there were any such central pool of industrial experts upon which we could draw for the supply of men to man a provincial department. No province can afford to employ specialists in every industry which might be developed in that province. But, if a central pool were available, an expert in any particular industry

might be taken by the province for a few years only, as was the intention of the Industrial Commission."

On the 5th September 1927, the Hon'ble Seth Govind Das moved a resolution in the Council of State in the following words :—

"This Council recommends to the Governor General in Council to allot a sum of fifty lakhs per annum for the coming ten years in the annual Budgets for the development of new industries in India under the direct supervision and control of the Government of India."

He deplored the inadequate progress which had been made in this direction, described the provincial industrial departments as in a moribund condition and saw no salvation until and unless the Government of India intervened. He proposed that funds should be provided by the central Government and recognised that, in consequence, supervision and control should certainly be in its hands. The resolution received a considerable amount of non-official support. It was, however, opposed by Government on the constitutional ground that the development of industries is a provincial transferred subject and also because the provision of a large lump sum is not the right way to develop industries ; at present at any rate the best way to improve the industrial development of India is to get rid of the provincial contributions and to enable the provincial departments of Industries to operate with much more funds at their command than they have at present.

The debate in the Council of State indicates, as indeed there are other grounds for contending, that the controversy of 1919 cannot be regarded as a closed issue. The arguments on the one hand that the popular responsible executive in a province should be in charge of a subject in which public opinion is keenly interested and on the other hand that the central Government cannot possibly divest itself of responsibility for the industrial progress of the country have each their own cogency. It is scarcely possible to form conclusions on this without an examination of the results that have been achieved under the existing system, and a descriptive report is under preparation which will deal in some detail with these results.

The results have admittedly fallen far short of those which, if the views taken by the Industrial Commission were well-founded, would have resulted from the adoption of their scheme ; but it should not be forgotten that provincial Governments were handicapped to an unexpected extent,

particularly in the earlier years, by financial stringency and industrial depression and by the lack of administrative experience which was inevitable on account of the novelty of the subject. Nor can it be assumed that the Government of India would have been able to surmount all the obstacles which have faced local Governments. At the same time the experience of the last decade lends support to those who believe (as the Industrial Commission clearly believed) that no great advance could be achieved by the unco-ordinated efforts of departments working under local Governments on a policy which was not determined by the needs of India as a whole. On the other hand, the transfer of responsibility to provincial Governments in 1920 had behind it the approval of the great bulk of Indian opinion throughout India, and the growth of provincial patriotism since that date makes it unlikely that public opinion generally will be more ready now to accept the more important proposals of Industrial Commission or to agree to any organization of the type which they favoured.

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